

FILED

AUG 15 2007

**NINA MITCHELL WELLS
SECRETARY OF STATE**

Resolution No. 07-677

**RESOLUTION ADOPTING SPECIAL PAY-TO-PLAY
RESTRICTIONS FOR PROFESSIONAL SERVICE
CONTRACTS AND EXTRAORDINARY
UNSPECIFIABLE SERVICE CONTRACTS**

Freeholder **CLIFTON** offered the following resolution and moved its adoption:

WHEREAS, substantial political contributions from those seeking to or performing business within the County of Monmouth raise reasonable concerns on the part of taxpayers and residents as to their trust in government contracts; and

WHEREAS, pursuant to P.L. 2005, c.271., counties are authorized to adopt by resolution measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the term of a contract; and

WHEREAS, pursuant to P.L. 2005 c.271, business entities receiving no-bid contracts are required to submit a list of political contributions that were made by the business entity during the preceding 12-month period; and

WHEREAS, the Monmouth County Board of Chosen Freeholders hereby declares that upon the effective date of this Resolution all professional and extraordinary unspecifiable service contracts awarded pursuant to Resolution 06-178 shall be subject to the restrictions contained herein; and

WHEREAS, in the absence of the State adopting comprehensive pay-to-play reform with anti-wheeling protection, and due to a history of contributions made to candidates for Monmouth County office and Monmouth County political parties by entities from outside of the County, and in the

interest of good government, the Board of Chosen Freeholders of the County of Monmouth desires to establish a policy that will avoid the perception of improper influence in local elections.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of Monmouth County, and State of New Jersey, as follows:

Section 1. Prohibition on Awarding Public Contracts to Certain Contributors.

(a) To the extent that it is not inconsistent with state or federal law, Monmouth County and any of its purchasing agents or departments or instrumentalities of the County thereof, as the case may be, shall not enter into any agreement or otherwise contract to procure services from any "business entity" as defined herein, including those awarded pursuant to any process including a fair and open process regardless of the amount of the contract, if such "business entity" has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the County's public announcement or private solicitation of a request for proposals, to:

- (i) any County candidate or holder of public office having ultimate responsibility for the award of the contract, or
- (ii) any campaign committee of such a candidate or holder of public office, or
- (iii) any Monmouth County party committee, or
- (iv) any municipal party committee within Monmouth County, or
- (v) any candidate committee, state or county political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that has within the last calendar year provided financial or in-kind support of Monmouth

County municipal or county elections and/or Monmouth County municipal or county parties.

- (b) No "business entity" that submits a proposal for, or agrees to any contract or agreement (including non-emergency contracts awarded by N.J.S.A. 40A:11 *et seq.* or the "Fair and Open" Process pursuant to N.J.S.A. 19:44A-20 *et seq.*) with the County or any departments thereof, as the case may be, shall knowingly solicit or make any contribution of money, pledge of contribution, including in-kind contributions in excess of the thresholds specified in subsection (d), between the time of the first public announcement or private solicitation of a request for proposals, as the case may be, and the later of the awarding of the contract to another proposer, or written withdrawal of the proposal, or, as to the successful applicant, the completion of the contract or agreement, except as permitted in section 1(d) to:
- (i) any County candidate or holder of public office having ultimate responsibility for the award of the contract, or
 - (ii) any campaign committee of such a candidate or holder of public office, or
 - (iii) any Monmouth County party committee; or
 - (iv) any municipal party committee within Monmouth County; or
 - (v) any candidate committee, state or county political party committee, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, that has within the last calendar year provided financial or in-kind support of Monmouth County municipal or county elections and/or Monmouth County municipal or county parties.
- (c) For purposes of this resolution, a "business entity" seeking a public contract means:
- (i) any professional or provider of extraordinary unspecifiable services as defined in

N.J.S.A. 40A:11-5(1)(a), and

- (ii) an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a "business entity" includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers employed by the entity, as well as any subsidiaries directly controlled by the business entity.
- (iii) A "business entity" does not include not-for-profit organizations or their officers or board members.
- (d) Any individual meeting the definition of "business entity" under this section may annually contribute a maximum of \$300 each for any purpose to any candidate for Monmouth County office, \$300 to municipal party committees within Monmouth County, \$300 to Monmouth County party committees, and \$300 to any candidate committee, state or county political party, legislative leadership committee, continuing political committee or political action committee (PAC) organized under §527 of the Internal Revenue Code, referenced in this resolution, without violating subsection (a) or (b) of this section. However, any group of individuals meeting the definition of "business entity" under this section, including principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of \$2,500 to all Monmouth County candidates and officeholders with ultimate responsibility for the award of the contract, and all municipal or county political parties, candidate committees, state political parties, legislative leadership committees, continuing political committee, and PACs referenced in this resolution combined, without violating subsection (a) or (b) of this section.

- (e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be the Monmouth County Board of Chosen Freeholders, if the contract requires approval or appropriation from the Board of Freeholders; or an individual who is responsible for the award of a contract and is appointed by the Board of Chosen Freeholders.

Section 2. Contributions Made Prior to the Effective Date.

This resolution does not apply retroactively. Political contributions, whether monetary or "in-kind", made prior to the effective date of this resolution shall not be deemed to be a violation of this resolution.

Section 3. Disclosure & Contribution Statement by Professional Business Entity and Provider of Extraordinary Unspecifiable Services.

- (a) The Public Disclosure Statement shall be filed along with the proposal by the "business entity" but consistent with P.L. 2005, c.271, must be filed no later than ten days prior to the awarding of a contract or agreement to procure services, including those awarded pursuant to a "fair and open process." The County or any of its purchasing agents or agencies, as the case may be, shall receive a completed Monmouth County Public Disclosure Statement form and provide that for public review at the County Purchasing Department, or in the case of a Park System contract, at the Park System Purchasing Department. The Monmouth County Public Disclosure Statement shall list all of the political contributions by the "business entity" to any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, holder of, an elective office of Monmouth County; or of another elective office within Monmouth County; or of a legislative district which includes all

or part of Monmouth County; or any continuing political committee, within one calendar year immediately preceding the County's public announcement or private solicitation of a request for proposals, noting the candidate or campaign committee, the amount and date, and the nature of the contribution.

- (b) The "business entity" will make the statement knowing that under penalty of perjury that it has not made a contribution in violation of the Resolution hereof and has not made or solicited contributions through intermediaries, third parties, immediate relatives, candidate committees, or Political Action Committees for the purpose of concealing the source of the contribution(s).
- (c) Filing an incorrect Public Disclosure Form may be deemed a breach of the contract and shall result in the "business entity" being debarred from being awarded any County contract for a period of four years.
- (d) The "business entity" shall have a continuing duty to report any violations of this resolution that may occur during the duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with Monmouth County and shall be in addition to any other certifications that may be required by any other provision of law. At a minimum, completion of the Public Disclosure Statement will be an annual requirement of the "business entity".
- (e) The annual Disclosure Form shall be filed within twenty (20) days following each anniversary of the proposal, if for a multi-year agreement.

Section 4. Return of Excess Contributions.

A "business entity", or Monmouth County candidate or officeholder, or municipal, state or county

party committee, candidate committee, legislative leadership committee, continuing political committee or PAC referenced in this resolution, may cure a violation of Section 1 of this Resolution, if, within 30 days after the applicable ELEC report, the "business entity" notifies the Board of Chosen Freeholders in writing and seeks and receives reimbursement of the contribution from the relevant Freeholder candidate or officeholder, municipal or county political party, state political party, candidate committee, legislative leadership committee, continuing political committee, or PAC referenced in this resolution.

Section 5. Penalty and Anti-Circumvention Provision.

- (a) It shall be a breach of a contract with Monmouth County for a "business entity" described in Section 1(c) to (i) make or solicit a contribution in violation of this resolution; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit a contribution through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition of or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Monmouth County; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make any contribution, which if made or solicited by the "business entity" itself, would violate this resolution; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contribution to circumvent the intent of this resolution; or (viii) directly or indirectly, through or by any other person or means do any act which would violate this resolution.

- (b) Furthermore, any "business entity" that violates (a) ii-viii shall be debarred from eligibility for future Monmouth County contracts for a period of four (4) calendar years from the date of the violation.

Section 6. Anti-Wheeling Restrictions.

- (a) No candidate committee for any candidate for Monmouth County office shall accept a contribution from a county committee of a political party, other than the county committee of the county in which the candidate or candidates reside, in excess of \$2,600 per election.
- (b) No candidate committee for any candidate for Monmouth County office shall accept a contribution from a state political party in excess of \$2,600 per election.
- (c) No candidate committee for any candidate for Monmouth County office shall accept a contribution from a legislative leadership committee in excess of \$2,600 per election.
- (d) No candidate committee for any candidate for Monmouth County office shall accept a contribution from a continuing political committee or PAC organized under § 527 of the Internal Revenue Code in excess of \$2,600 per election.
- (e) No candidate committee for any candidate for Monmouth County office shall accept a contribution from another candidate committee, other than from a candidate committee located in at least part of Monmouth County, in excess of \$2,600 per election.
- (f) No candidate committee for any candidate for Monmouth County office shall accept a contribution from a municipal political party committee, other than a municipal political party committee of a municipality located in Monmouth County, in excess of \$2,600 per election.
- (g) Any candidate or candidate committee who has taken contributions in excess of those outlined in Section 6(a)-(f) of this Resolution shall be subject to a fine of up to \$500 per violation, pursuant to N.J.S.A. 40:41A-101.

Seconded by Freeholder MC MORROW and adopted on roll call by the following vote:

	YES	NO	ABSTAIN	ABSENT
Mrs. McMorrow	X			
Mrs. Little	X			
Mr. Clifton	X			
Mrs. Burry	X			
Mr. Barham	X			

CERTIFICATION

I HEREBY CERTIFY THE ABOVE TO BE A TRUE COPY
OF A RESOLUTION ADOPTED BY THE BOARD OF CHOSEN
FREEHOLDERS OF THE COUNTY OF MONMOUTH AT A
MEETING HELD August 9, 2007

Jane Stray
CLERK